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To:

Cc:

Subject: hot interest

The applicable date for computing section 6621(c) interest on a large corporate underpayment of tax (hot interest) is established thirty days after the issuance of a first 30-day letter or a notice of deficiency, whichever is earlier. Once triggered, the applicable date is effective for all subsequent underpayments determined for that year.

Section 6601(a) provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest at the rate established under section 6621 will accrue from the last date to the date paid.

Section 6621 establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment for any period after the applicable date, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." This interest rate is also known as "hot interest."

A "large corporate underpayment" is an underpayment of tax that exceeds \$100,000.00 for any single taxable period. The "applicable date" is the thirtieth day after the earlier of the mailing of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review ("30-day letter"), or the mailing of the notice of deficiency. See section 6621(c)(2)(A)(i) and (ii) and Treas. Reg. Section 301.6621-3(c)(2)(i) and (ii), which are generally effective for periods after December 31, 1990.

"Hot interest" begins to run per section 6601(a) "when a tax becomes both due and unpaid." Avon Products, Inc. v. United States, 588 F.2d 342, 344 (2d. Cir. 1978). Pursuant to section 301.6621-3(b)(2)(ii), the existence of a threshold underpayment of tax should be determined as of the due date of the return. Thus, we would argue that an NOL carryback that arises after the due date of the return does not affect the existence of a threshold underpayment.

We continue to believe that once the threshold is met, not interest applies to all underpayments of tax after the applicable date regardless of any payments made. The satisfaction of a deficiency by the carryback of an NOL is considered a payment. Section 6601(d) provides generally that if an amount of tax is reduced by reason of a carryback of an NOL, the reduction shall not affect the computation of interest for the period ending with the filing date for the year in which the NOL arises. We do not agree with the decision in Med James, Inc., v. Commissioner, 121 T.C. 147 (2003).

Please call if you have any questions.